PP

v.

MOHD SHAIFULDIN KHAIRUDIN & ORS

HIGH COURT MALAYA, IPOH
VT SINGHAM J
[CRIMINAL REVISIONS NO: 43-12-05 & 43-13-05]
24 SEPTEMBER 2005

CRIMINAL PROCEDURE: *Jurisdiction of court - Magistrate's court - Granting of Discharge Not Amounting To An Acquittal (DNAA) - Whether Magistrate has power to grant DNAA in favour of accuseds on tentative charge of murder under s. 302 Penal Code - Whether Magistrate has power to transmit case to High Court without consent of Public Prosecutor - Criminal Procedure Code, s. 177A - Whether Magistrate may refuse to grant further remand if process of court abused by multiple adjournments and excessive delay - Whether DNAA given by Magistrate made without jurisdiction*

CRIMINAL PROCEDURE: *Revision - Order of Magistrate - Granting of Discharge Not Amounting To An Acquittal (DNAA) - Whether Magistrate has power to grant DNAA in favour of accuseds on tentative charge of murder under s. 302 Penal Code - Whether Magistrate has power to transmit case to High Court without consent of Public Prosecutor - Criminal Procedure Code, s. 177A - Whether Magistrate may refuse to grant further remand if process of court abused by multiple adjournments and excessive delay - Whether DNAA given by Magistrate made without jurisdiction*

The three respondents herein were produced at the Magistrate's court on 14 October 2004 on a tentative charge, an offence of murder punishable under s. 302 of the Penal Code. The Magistrate ordered the respondents to be remanded at the prison on the application of the prosecuting officer on the ground that the DNA report had not been obtained as yet by the Investigating Agency. She then fixed a date for mention on 5 November 2004 pending the consent of the Public Prosecutor as provided under s. 177A of the Criminal Procedure Code for the case to be transmitted to the High Court for trial. When the case came up again for mention, the Prosecuting Officer informed the court that the DNA report was not ready and the Investigation Agency required more time to obtain the said report and applied for a further mention date pending the DNA report. After

numerous delays and multiple adjournments, the Magistrate granted a Discharge Not Amounting To An Acquittal (DNAA) in favour of the three respondents on the ground that the prosecution was not ready with the consent to transmit the case to the High Court and the fact that the Deputy Public Prosecutor did not attend court as directed by the Magistrate to explain the delay. The Magistrate referred the record of proceedings to this court to consider on the correctness and propriety of the order made by the Magistrate and the manner in which she had invoked her power to grant the said DNAA and whether the order of the DNAA was a proper one at law. The issues that arose were (1) since the respondents have been recharged in another Magistrate's court for the same offence, whether the matter before this court and the decision would become academic; (2) whether a Magistrate has the power, inherent or otherwise, to grant a DNAA in favour of an accused person who was produced at the Magistrate's court on a tentative charge of murder, an offence punishable under s. 302 of the Penal Code which under the law was triable only by a judge in the High Court and not by a Magistrate if the consent of the public prosecutor was not formally produced to the Magistrate for transmitting the case to the High Court forthwith as provided under s. 177A of the Criminal Procedure Code; (3) whether a Magistrate's court has the power to transmit the case to the High Court where an accused was produced at the Magistrate's court on a tentative charge of murder, an offence punishable under s. 302 of the Penal Code which was triable only by a judge of the High Court without the consent of the public prosecutor being produced and tendered at the Magistrate's court; and (4) whether the Magistrate could refuse to extend the order of remand if there was no satisfactory explanation for the delay in producing the consent for the case to be transmitted to the High Court pursuant to s. 177A of the Criminal Procedure Code.

Held:

(1) Notwithstanding that the decision of this court in the instant case has become academic, it was desirable in the respectful view of this court to dispose of the issues raised in this criminal revision since arguments on law have been advanced by both parties and the issues involved has created some degree of uncertainty and judicial dilemma.

(2) The Magistrate has no inherent power in a criminal case to grant a DNAA where the consent of the public prosecutor to transmit the case to the High Court under s. 177A of the Criminal Procedure Code has been delayed or not tendered as yet. Although the Order of the Magistrate to grant the DNAA was to prevent injustice, delay and the process of the Court from being abused, the Magistrate still had no power to order a DNAA as she had no jurisdiction to try the charge of murder under s. 302 of the Penal Code as it was triable exclusively by the High Court. (para 29)

(3) The legitimate interpretation that could be applied to s. 177A of the Criminal Procedure Code when viewed in its entirety was that the Magistrate could not order the case to be transmitted to the High Court without the consent of the public prosecutor. It was important to consider s. 177A of the Criminal Procedure Code in its entirety and not in isolation. Accordingly, a Magistrate has no power to transmit the case to the High Court where an accused was produced at the Magistrate's court for an offence under s. 302 of the Penal Code which was triable exclusively by the High Court without the consent of the public prosecutor being produced. (para 30)

(4) The Magistrate's court may perhaps refuse to grant further remand or extend the remand for good reasons to be recorded and if it was found that the process of the court was being abused by multiple adjournments and there was indefinite and excessive delay over a long and unreasonable period pending the consent of the public prosecutor being produced. An application to extend further the remand period until the consent of the public prosecutor has been obtained should not give the impression that it should follow automatically as the power whether to grant an order or not to extend the remand period was entirely at the discretion of the Magistrate. The court has to act judicially and has to consider both the public interest and any unfairness to an accused person as consideration by the court of only one aspect without considering the other aspect may not be a proper judicial exercise. Nevertheless, each case should be considered and decided on its own particular set of facts and circumstances of the case. (para 36)

(5) The remand of an accused person should not be ordered by the Magistrate generally as a matter of course or by a mechanical exercise. If the prosecuting officer does not advance any satisfactory explanation or reasonable cause that a further remand was necessary for the purpose of obtaining the consent of the public prosecutor with a view to transmit the case to the High Court, the Magistrate has the discretion by just not granting further remand or extension as an accused or any individual could not be left with a charge or criminal proceedings hanging over him for an indefinite period unless for any reasonable cause. The court has to exercise its discretionary powers judiciously and not act as a rubber stamp and lean always towards granting or extending the remand period without having sufficient materials before the court. (para 37)

(6) The Magistrate has the power to direct the Investigating Agency through the prosecuting officer to obtain the documents and fix a time frame to comply with the direction of the court. If, however, the Investigating Officer was not able or prepared to comply with the direction of the court, then perhaps it would tantamount to non-compliance with the order of court and the consequences should follow and the authorities concerned must be prepared to face the consequences. On the other hand, if the Investigating Agency has obtained all the relevant documents and the investigation has been completed but is awaiting the consent to be issued by the public prosecutor, then the Magistrate perhaps can direct the Public Prosecutor or the Deputy Public Prosecutor through the Prosecuting Officer to produce the consent as required under s. 177A of the Criminal Procedure Code within a reasonable time and fix the time frame if the Public Prosecutor wished to proceed with the prosecution of the accused on the charge which was exclusively triable by a judge of the High Court. All these orders or directions are safeguards for an accused person so that his right to a speedy trial would be adhered to. (para 38)

(7) The Magistrate had directed the prosecuting officer to request for the Deputy Public Prosecutor to attend court on 18 July 2005 to explain the delay and to inquire whether the consent was issued and if so, when, so as to transmit the case to the High Court if the Public Prosecutor intended to proceed further with the prosecution as the explanation given by the

Prosecuting Officer had not been consistent, unsatisfactory, unacceptable and had diverted the cause of the delay to the Deputy Public Prosecutor's office as no specific reasons or instruction had been given to the Prosecuting Officer by the Deputy Public Prosecutor in reference to the case which was pending over an indefinite period at the Magistrate's court. In those circumstances, the Deputy Public Prosecutor was obliged to comply with the direction of the court. If a Deputy Public Prosecutor decides to disregard the directive or order of the court be it a Magistrate's court or Sessions court irrespective of the Deputy Public Prosecutor's status or its seniority, he or she must be prepared to accept the consequences as a result of the non-compliance of the order or directive of the Magistrate. Every order or judgment of the court must be complied or else there will be chaos and the institution must be protected and continued to have its safeguards. Failure of the Deputy Public Prosecutor to appear in court after he had been informed by the prosecuting officer that the Magistrate required him to attend court and explain the position of the investigation and the consent might be described as disobedience to an order of the court or amounted to discourtesy to the Magistrate. (paras 47, 48 & 49)

(8) As to the complaint raised that the respondents were not released from the dock upon the order of DNAA, even in cases of criminal trial or where the proceedings in court was in progress, an accused person should not be handcuffed unless the accused was violent or was shown to be violent for which there must be some credible and admissible material before the court in support of the violence or has committed a crime of violence or that he may attempt to escape. In the instant case, the respondents were ordered to be discharged by the court and consequently they were entitled to their freedom as guaranteed by the Federal Constitution and no further restrain was required or placed on them. Prosecuting Officers who were also officers of the court were obliged to ensure that the order of the court was practically carried out without putting any strain upon the accused or embarrassment to the court as once the accused was ordered to be discharged by the court, he was entitled to be freed immediately without any further restraint or conditions unless directed otherwise by the court which was not so in the instant case. Accordingly, the Prosecuting Officer ought to have carried out the order of discharge by ensuring that the

A accused was taken out of the dock and freed and his liberty restored immediately so as not to embarrass the court to put the accused to any strain. (paras 50 & 51)

(9) This court was of the view that the DNAA given by the B Magistrate was made without jurisdiction. As the matter had presently become academic, there was no order made on the revision proceedings. (para 52)

Case(s) referred to:

Attorney General's Reference No 1 of 1990 [1992] 3 All ER 169 ***(refd)***
C *Balogh v. ST Albans Crown Court [1975] QB 73* ***(refd)***
Bell v. DPP [1985] 3 All ER 73 ***(refd)***
Cheak Yoke Thong v. PP [1984] 2 CLJ 83; [1984] 1 CLJ (Rep) 87 HC ***(refd)***
Chong Siew Choong v. PP [1996] 2 CLJ 823 HC ***(refd)***
D *Chu Chee Peng v. PP [1973] 2 MLJ 35* ***(foll)***
Director Of Public Prosecutions v. Humphrys [1976] 2 All ER 497 ***(refd)***
Diwan Naubat Rai v. State Through Delhi Administration AIR [1989] SC 542 ***(refd)***
Do'r v. The Director Of Public Prosecutions [1997] 2 IR 273 ***(refd)***
Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar [1980] 1 SCC
E *81* ***(refd)***
Izuora v. The Queen [1953] AC 327 ***(refd)***
K Abdul Rasheed v. PP, Ah Chak Arnold v. PP [1985] 1 MLJ 193) ***(foll)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***
F *Koh Teck Chai v. PP [1968] 1 MLJ 166* ***(refd)***
Ling Ah Hun & Anor v. PP [1960] MLJ xlv ***(refd)***
Loknath Padhan v. Birendra Kumar Sahu AIR [1974] SC 505 ***(refd)***
PP v. Au Seh Chun [1998] 3 CLJ Supp 56 HC ***(refd)***
PP v. Choo Chuan Wang [1992] 2 CLJ 1242; [1992] 3 CLJ (Rep) 29 HC ***(refd)***
G *PP v. Darkasyi & Anor [2002] 8 CLJ 780 HC* ***(refd)***
PP v. Dato' Kee Yong Wee & Ors [1987] 2 CLJ 329; [1987] CLJ (Rep) 865 HC ***(refd)***
PP v. David Noordin [1980] 2 MLJ 146 ***(refd)***
PP v. Duis Akim & Ors [2005] 2 CLJ 936 HC ***(refd)***
H *PP v. H Chamras Tasaso [1975] 2 MLJ 44* ***(foll)***
PP v. Hon Jiew Foh [1994] 3 CLJ 488 HC ***(refd)***
PP v. Ilamaran Kanniappan [1992] 1 CLJ 492; [1992] 3 CLJ (Rep) 224 HC ***(refd)***
PP v. Karumah [1980] 2 MLJ 102 ***(refd)***
PP v. Khoo Kay Jin [1973] 1 MLJ 259 ***(refd)***
I *PP v. Lee Chan Sang [1989] 1 CLJ 144; [1989] 1 CLJ (Rep) 139 SC* ***(refd)***
PP v. Leong Ying Ming [1993] 2 CLJ 143 SC ***(refd)***

PP v. Mat Radi [1982] 1 MLJ 221 ***(refd)***
PP v. Oladotun Lukmaru Umaru & Ors [1990] 2 CLJ 1026; [1990] 2 CLJ (Rep) 795 HC ***(foll)***
PP v. Saubin Beatrice [1983] 1 CLJ 31; [1983] CLJ (Rep) 808 HC ***(refd)***
PP v. Tanggaah [1972] 1 MLJ 207 ***(refd)***
PP v. Wee Swee Siang [1948] 14 MLJ 114 ***(foll)***
PP v. Zainuddin & Anor [1986] 2 MLJ 100 ***(foll)***
R v. Jewitt [1985] 2 SCR 128 ***(refd)***
R v. Oxford City Justices, ex p Smith [1982] 75 Cr App R 200 ***(refd)***
R v. Secretary Of State For Home Department And Another; ex p Abdi [1996] 1 All ER 641 ***(refd)***
Ramanathan Chelliah v. PP [1996] 2 CLJ 765 CA ***(refd)***
Reg v. John Robins [1884] 1 Cox 114 ***(refd)***
Srinivas Pal v. Union Territory Of Arunachal Pradesh (Now State) AIR [1998] SC 1072 ***(refd)***
State Of Maharashtra v. Champalal Punjaji Shah AIR [1981] SC 1675 ***(refd)***
Stogmuller v. Austria [1969] 1 EHRR 155 ***(refd)***
Sun Life Assurance Company Of Canada v. Jervis [1944] AC 111 ***(foll)***
Tan Foo Su v. PP [1967] 2 MLJ 19 ***(refd)***
Teng Howe Sing v. Ketua Polis Daerah & Anor [1999] 8 CLJ 626 HC ***(refd)***
Veerbhara v. Ramasamy Naikar AIR [1958] SC 1032 ***(refd)***
Weston v. Central Criminal Court Courts Administrator [1977] 1 QB 32 ***(refd)***
Yaakub Ahmad v. PP [1975] 2 MLJ 223 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 36
Criminal Procedure Code, ss. 9, 173(g), 177A, 254, 259
Dangerous Drugs Act 1952, ss. 39B(1)(a), 41A
Federal Constitution, art. 5(1)
Penal Code, s. 302
Subordinate Courts Act 1948, ss. 85, 86

Penal Code [India], ss. 304A, 338

For the appellant - Abdul Rahman Putra Hj Taha (Budiman Lufti Mohamed DPP with him)
For the 1st & 2nd respondents/accuseds - Naran Singh; M/s Naran Singh & Co
For the 3rd respondent/accused - LH Singh (Shivdev Singh with him); M/s LH Singh & Co

Reported by Suhainah Wahiduddin

JUDGMENT

VT Singham J:

[1] In this case, the three respondents were produced at the Magistrate's Court, Ipoh on 14 October 2004 on a tentative charge, an offence of murder punishable under s. 302 of the Penal Code. The tentative charge against the first and second respondents which was registered at the Magistrate's Court, Ipoh vide Case No: KT 81-30-04 is as follows:

> Bahawa kamu bersama-sama, pada 08/02/2003 jam lebih kurang 2.00 petang, bertempat di rumah no. 35, Laluan Pengkalan Barat 6, Taman Puteri Lindungan Bulan, Pasir Puteh, Ipoh di dalam daerah Kinta, dalam Negeri Perak Darul Ridzuan dalam mencapai niat bersama, telah melakukan pembunuhan dengan menyebabkan kematian ke atas Sa'adiah bte. Wahid, KPT: 660320-08-7066, umur 37 tahun dan oleh yang demikian, kamu telah melakukan kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan dibaca bersama Seksyen 34 Kanun yang sama.

[2] As against the third respondent, the charge which was registered at the Magistrate's Court *vide* Case No: KT 81-31-04 is as follows:

> Bahawa Mohd Shaifuldin b. Khairudin dan Abdul Rahim b. Mohd Ali telah pada 08/02/2003 jam lebih kurang 2.00 petang, bertempat di rumah no. 35, Laluan Pengkalan Barat 6, Taman Puteri Lindungan Bulan, Pasir Puteh, Ipoh di dalam daerah Kinta, dalam Negeri Perak Darul Ridzuan telah melakukan pembunuhan ke atas Sa'adiah bte. Wahid, KPT: 660320-08-7066, umur 37 dan bahawa kamu telah bersubahat dengan Mohd Shaifuldin b. Khairudin dan Abdul Rahim b. Mohd Ali di dalam melakukan kesalahan bunuh tersebut, yang mana kesalahan bunuh tersebut dilakukan akibat dari persubahatan kamu dan oleh yang demikian, kamu telah melakukan kesalahan yang boleh dihukum di bawah seksyen 109 Kanun Keseksaan dan seksyen 302 Kanun yang sama.

[3] As the learned Magistrate has no jurisdiction to try the charge which was an offence of murder, no plea was taken from the respondents and the learned Magistrate on 14 October 2004 ordered the respondents to be remanded at the prison on the application of the prosecuting officer on the ground that the DNA report has not been obtained as yet by the Investigating Agency. She then fixed a date for mention on 5 November 2004 pending

the consent of the Public Prosecutor as provided under s. 177A of the Criminal Procedure Code for the case to be transmitted to the High Court, Ipoh for trial.

[4] On 5 November 2004 when the case came up again for mention, the prosecuting officer informed the court that the DNA report was not ready as yet and the Investigation Agency required more time to obtain the said report and applied for a further mention date pending the DNA report. The learned Magistrate fixed a further mention date to 6 December 2004. At this stage, it is important to state the chronology of the proceedings at the Magistrate's Court, Ipoh which had resulted in the Magistrate having granted a Discharge Not Amounting To An Acquittal on 18 July 2005 in favour of the respondents.

CHRONOLOGY OF PROCEEDINGS AT THE MAGISTRATE'S COURT

No.	Date	Notes	Order of learned Magistrate	Next date
1.	14.10.04	Prosecuting Officer applied for another date as DNA report has not been obtained as yet.	Case fixed for mention.	5.11.04 (M)
2.	5.11.04	Prosecuting Officer applied for adjournment as the DNA report on the accuseds has not been obtained as yet and applied for another date in a month.	Case fixed for mention.	6.12.04 (M)
3.	6.12.04	Prosecuting Officer applied for another date as Magistrate was on leave.	Case fixed for mention.	6.1.05 (M)

A	4.	6.1.05	Prosecuting Officer applied for another mention date as the chemist report has not been obtained as yet.	Case fixed for mention.	3.2.05 (M)
B					
	5.	3.2.05	Prosecuting Officer applied for another date as the Investigation Papers were with the head of the prosecution unit.	Case fixed for mention.	3.3.05 (M)
C					
	6.	3.3.05	Prosecuting Officer applied for another mention date as he has not received directions from the learned DPP to transmit the case to the High Court.		
D					
E			Defence counsel for the 1st and 2nd accuseds informed the court that the case has been fixed for mention for a long time and applied to the Magistrate for the learned DPP to explain as to why the case is fixed for mention for so long.	Case fixed for mention.	7.4.05 (M)
F					
G					
	7.	7.4.05	Prosecuting Officer informed the court that the Investigation Papers were still with the learned DPP and applied for two months for the Investigation Papers to be forwarded to the Attorney-General's chambers Putrajaya.		
H					
I					

		Learned counsel for accuseds 1st and 2nd applied to the court to confirm whether the chemist report has been obtained.			A
		Prosecuting Officer informed the court that he is unable to give a reply as the Investigation Papers were with the DPP.	Case stood down.		B C
		Recall 10.55 a.m. Prosecuting Officer informed the court that he has spoken to the DPP, En. Ahmad Sazali and he has been informed that the chemist report has been obtained and the learned DPP has given instructions to the Investigating Officer to prepare a report and the Investigation Papers will be forwarded to the Investigating Officer with the direction and the Prosecuting Officer has been instructed to obtain another mention date for 2 months.	Case fixed for mention.		D E F G H
		Learned defence counsel applied for a shorter date.		5.5.05 (M)	
8.	5.5.05	Prosecuting Officer informed the court that he has received instructions from the	Case fixed for final mention.		I

		learned DPP to obtain a longer date of two months as the case is 'agak rumit' and the learned DPP required a longer time to make a comprehensive assessment.		4.7.05 (M)
9.	4.7.05	Prosecuting Officer informed the court that he was still waiting for instructions from the learned DPP and that the Investigation Papers has been forwarded to the Attorney-General's Chambers. He also informed the court that the Investigation Papers were infact returned to the learned DPP 12.6.05 and on 24.6.05 the Investigation Papers has been sent back again to the Attorney-General's Chambers.		
		Learned counsel informed the court that the case has been postponed for the past one year and on the last date of mention on 5.5.05, the court had given a period of two months and had directed the learned DPP to attend court today.	Case fixed for mention for DPP to attend court.	18.7.05 (M)

10.	18.7.05	Prosecuting Officer informed the court that on 15.7.05 he had received instruction from the learned DPP to obtain another date for mention on the ground that the charges against the accused persons were still under consideration by the Attorney-General where there is a possibility for additional charges against the accused persons apart from the charge under Section 302 of the Penal Code. In the circumstances, a longer date was required.		
		The prosecuting officer also informed the court that he will ensure that the instruction is obtained on the next date and that he is sure that the learned DPP will frame the most suitable charge against the accuseds.	Case stood down.	
		Learned counsel informed the court that he has no objection for an adjournment but however he wanted to know why the case is allowed to be dragged on and the		

	delay and what is he supposed to inform the accuseds.	
	Recall 10.00 a.m.	The court is not satisfied with the grounds advanced on behalf of the learned DPP and DPP was requested to attend court to explain personally but is not present.
		In actual fact, the investigation should have been completed before the accused persons were charged in court. In the circumstances, the court grants Discharge Not Amounting To An Acquittal.

[5] As recorded above, on 18 July 2005, the learned Magistrate granted a Discharge Not Amounting To An Acquittal in favour of the three respondents on the ground that the prosecution was not ready with the consent to transmit the case to the High Court and the fact that the learned Deputy Public Prosecutor did not attend court as directed by the learned Magistrate to explain the delay. Nevertheless, as the learned Magistrate was unsure whether she had the jurisdiction to grant the Order of Discharge Not Amounting To An Acquittal, she referred the record of proceedings to this court on the same day on 18 July 2005 for this court to exercise its revisionary powers to determine the correctness of the said Order. The letter dated 18 July 2005 from the learned Magistrate states as follows:

MAHKAMAH SESYEN/MAJISTRET,
JALAN PANGLIMA BUKIT GANTANG WAHAB,
30507 IPOH,
PERAK DARUL RIDZUAN.

Ruj. Tuan: Bil. ( ) dlm.
Ruj. Kami: Bil. ( ) dlm. M.S.I.
Tarikh:

18 haribulan Julai, 2005.

Timbalan Pendaftar (1),

Mahkamah Tinggi Ipoh,

Perak.

Tuan/Puan,

PERMOHONAN SEMAKAN SEMULA KEPADA YANG ARIF HAKIM DI BAWAH SEKSYEN 323 KANUN PROSEDUR JENAYAH BAGI KES NO. 81-30-2004 PP LWN MUHAMMAD SHAIFULDIN B. KHAIRUDIN DAN ABDUL RAHIM B. MOHD. ALI. DAN KES NO. 81-31-2004, PP LWN NORHAFIDAH BT. YEOP MAT ISA.

Saya merujuk kepada perkara yang tersebut di atas.

2. Untuk makluman Puan, pada 18 haribulan Julai, 2005 saya telah terkhilaf dari segi undang-undang apabila telah melepaskan tanpa membebaskan (DNAA) satu kes yang melibatkan tiga Orang Kena Tuduh (OKT) yang telah dituduh di bawah Seksyen 302 Kanun Keseksaan.

3. Untuk makluman Puan juga, OKT-OKT di dalam kes ini telah direman selama lebih dari satu (1) tahun dengan alasan untuk menunggu rekuisisi bagi memindahkan kes ini ke Mahkamah Tinggi. Setelah ditanya kepada Pegawai Pendakwa, Pegawai Pendakwa mengatakan kes ini masih di bawah siasatan dan pihak Timbalan Pendakwaraya masih di dalam proses membuat keputusan tentang pertuduhan manakah yang paling sesuai untuk dituduh ke atas OKT-OKT. (Puan boleh merujuk kepada catitan di dalam Nota Keterangan)

4. Oleh kerana Mahkamah tidak berpuas hati dengan alasan-alasan tersebut dan merasakan ia tidak adil kepada OKT-OKT, maka Mahkamah telah DNAA kan kes ini. Mahkamah juga berpendapat pihak Timbalan Pendakwaraya boleh menuduh OKT-OKT ini semula sekiranya segala siasatan telah selesai. Tujuan Mahkamah hanyalah untuk mendapatkan keadilan bagi semua pihak.

5. Setelah membuat semakan, barulah saya mendapat tahu bahawa Mahkamah Majistret tidak mempunyai bidang kuasa untuk DNAA kan kes yang mana Mahkamah Rendah tidak mempunyai bidang kuasa untuk mendengar dan membicarakan kes tersebut.

6. Di atas alasan-alasan tersebut, saya dengan ini memohon agar satu semakan semula terhadap kes ini ditetapkan oleh Puan untuk didengar oleh Yang Arif Hakim untuk menentukan tentang kedudukan kes ini yang sebenarnya. Saya memohon maaf kerana kesilapan yang dilakukan ini adalah tidak disengajakan dan di luar pengetahuan saya.

Sekian, terima kasih.

"SAYA YANG MENURUT PERINTAH"

Yang Benar

t.t

(ROHAIDA BINTI ISHAK)
Majistret
Mahkamah Majistret (3)
Ipoh,
Perak Darul Ridzuan.

[6] On receipt of the aforesaid letter from the learned Magistrate and after having perused the record of proceedings, this court was of the view that this was a matter which required this court to consider on the correctness and propriety of the order made by the learned Magistrate and the manner in which she had invoked her power to grant Discharge Not Amounting To An Acquittal (DNAA) and whether the order of Discharge Not Amounting To An Acquittal (DNAA) is a proper one at law. Accordingly, this court directed the learned Deputy Registrar of the High Court, Ipoh to fix a date of hearing and the counsels for the respondents and the Deputy Public Prosecutor were informed of the date of hearing.

[7] On 22 August 2005, when the matter came up for hearing, the learned Deputy Public Prosecutor, Dato' Abdul Rahman Putra bin Haji Taha with En. Budiman Lufti bin Mohamed and the counsels, namely, Dr. Naran Singh for the first and second respondents and Mr. Lal Harcharan Singh with Mr. Shivdev Singh for the third respondent were present. At the invitation of this court, pursuant to s. 36 of the Courts of Judicature Act 1964, both the learned Deputy Public Prosecutor and counsels submitted on the legality and correctness of the said Order of

Discharge Not Amounting To An Acquittal which was granted by the learned Magistrate on 18 July 2005. By consent, it was ordered for both the revisions to be heard together.

[8] Section 36 of the Courts of Judicature Act 1964 states:

> **Discretion of Court as to hearing parties**
>
> Subject to any written law for the time being in force no party shall have any right to be heard before the High Court when exercising its powers of revision and supervision:
>
> Provided that no final order shall be made to the prejudice of any person unless the person has had an opportunity of being so heard.

[9] The learned Deputy Public Prosecutor, Dato' Abdul Rahman Putra bin Haji Taha with his usual politeness and candidness submitted that the learned Magistrate has no power to grant the Order of Discharge Not Amounting To An Acquittal where the charge registered before the court was for an offence under s. 302 of the Penal Code which is triable only by the High Court. He submitted that the learned Magistrate's duty was only to transmit the case to the High Court as provided under s. 177A of the Criminal Procedure Code upon the consent of the Public Prosecutor having been tendered to the court and in support of his contention, he relied on the case in *Public Prosecutor v. Lee Chan Sang* [1989] 1 CLJ 144; [1989] 1 CLJ (Rep) 139. In that case, the respondent with some other accuseds were charged in the Magistrate's Court, Kuala Lumpur on 9 December 1983 for an offence of trafficking dangerous drugs under the Dangerous Drugs Act 1952. At the Magistrate's Court, the charge against the respondent and some of the other accuseds was withdrawn on 9 March 1984 by the prosecuting officer. The Magistrate acquitted and discharged the respondent and the other accuseds. Subsequently, in July 1984, the respondent was rearrested and charged again for an offence of doing an act for the purposes of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952. On 16 July 1984, the Public Prosecutor issued a written consent against the respondent for the case to be transmitted to the High Court. On 11 February 1988, the respondent was produced at the High Court, Kuala Lumpur to face the said charge. At the outset of the proceedings at the High Court and before the plea of the respondent was taken, the learned counsel Mr. Manjeet Singh Dhillon raised a preliminary

objection that *autre fois acquit* applied to the respondent and it was not open to the prosecution to proceed against the respondent. His Lordship Shankar J (as he then was) agreed with the objection and upheld the plea of *autre fois acquit*. The Public Prosecutor then appealed to the Supreme Court against the decision of the High Court. His Lordship Hashim Yeop A. Sani Ag. CJ (Malaya) *inter alia* held that under s. 41A of the Dangerous Drugs Act 1952, the Magistrate's Court has only jurisdiction in so far as to receive the production of the accused person and to have the charge explained to him and to transmit the case to the High Court forthwith without holding a preliminary inquiry and that the Magistrate's Court has no jurisdiction even to record a plea of the charge and that the trial of the case shall be by that of a High Court Judge sitting alone. His Lordship further held that on the facts of that case the plea of *autre fois acquit* cannot succeed as the merits of the prosecution case was not heard. The appeal by the learned Deputy Public Prosecutor in that case was allowed and the order of the learned High Court Judge was quashed.

[10] Therefore, the learned Deputy Public Prosecutor in the instant case, submitted that the Order of the learned Magistrate granting the Discharge Not Amounting To An Acquittal (DNAA) should be revised and set aside.

[11] On the other hand, Mr. L.H. Singh learned senior counsel who appeared with Mr. Shivdev Singh for the third respondent graciously conceded that the learned Magistrate perhaps had no power to grant a Discharge Not Amounting To An Acquittal (DNAA). However, the complaint of the learned senior counsel was that the Magistrate cannot be used as a 'rubber stamp' to keep on granting the application of the prosecution to postpone the case to an indefinite period until the investigation is completed and/or the consent of the Public Prosecutor is produced at the convenience of the Deputy Public Prosecutor's office before the case is transmitted to the High Court.

[12] Learned counsel Mr. Shivdev Singh's complaint was that the police and the prosecution had no respect for the Order of the learned Magistrate. He complained that despite the Order of the learned Magistrate having granted a Discharge Not Amounting To An Acquittal (DNAA), the handcuffs of the three respondents were not removed and the respondents were not released from the dock but instead they were ordered by the prosecuting officer to

be taken to the lock-up with their handcuffs on which happened to be in the same building and subsequently, the respondents were produced and recharged before another Magistrate's Court, Ipoh and the case was fixed for mention on 19 September 2005. Learned counsel submitted that he had protested before the learned Magistrate who had granted a Discharge Not Amounting To An Acquittal (DNAA) that the respondents were not freed from the dock and that the Prosecuting Officer had not complied with the Order of the court. At the same time, learned counsel posed to the learned Magistrate as to who was running the court? Was it the Magistrate or the Prosecuting Officer? But there was no response from the learned Magistrate.

[13] On the other hand, Dr. Naran Singh, learned counsel for the first and second respondents submitted as follows:

(1) the learned Magistrate has the power to grant a Discharge Not Amounting To An Acquittal (DNAA);

(2) the learned Magistrate infact has the power to transmit the case to the High Court even without the consent of the Public Prosecutor having been tendered at the Magistrate's Court;

(3) the case in *Public Prosecutor v. Lee Chan Sang* referred to by the learned DPP has no relevance to the issue before this court which learned counsel submitted was in reference to s. 41(A) of the Dangerous Drugs Act 1952 whereas in the instant case, the subject matter was under s. 177A of the Criminal Procedure Code;

(4) he also submitted that in that case, the learned Magistrate had discharged and acquitted the accused whereas in the instant case, the learned Magistrate had only granted a Discharge Not Amounting To An Acquittal (DNAA). Therefore, learned counsel submitted that the case in *Public Prosecutor v. Lee Chan Sang* has no relevance and does not assist the prosecution in the instant case to support their contention that the learned Magistrate has no power to grant the Discharge Not Amounting To An Acquittal and that that case ought to be distinguished.

[14] Upon hearing both the learned Deputy Public Prosecutor and the learned counsels, this court posed the following questions?

(1) In view of the fact that it has now been brought to the attention of this court that the respondents have been recharged in another Magistrate's Court for the same offence on the same day, whether the matter before this court and the decision to be made will become academic and that there is no further proceedings pending for this court to make any Order in the instant revision proceedings;

(2) whether the consent is ready to be produced at the Magistrate's Court where the respondents were recharged and whether the case is ready for transmission to this court;

(3) whether the Magistrate could refuse to extend the order of remand if there is no satisfactory explanation for the delay in producing the consent for the case to be transmitted to the High Court pursuant to s. 177A of the Criminal Procedure Code.

[15] Dr. Naran Singh, learned counsel for the first and second respondents, immediately responded as follows:

(1) since the matter was referred by the learned Magistrate to this court as she was in a dilemma whether her decision was correct, it is not an academic exercise and this court ought to give a ruling;

(2) there are several other cases of similar nature which are pending at the Magistrates Court where the Magistrates are in a dilemma whether to grant Discharge Not Amounting To An Acquittal (DNAA) since no consent has been produced for the case to be transmitted to the High Court pursuant to s. 177A of the Criminal Procedure Code despite having granted several adjournments on the application of the prosecution;

(3) in the interest of justice and to clear the dilemma faced by the Magistrates Court, it is only appropriate that this court should deliver its decision as it involves legal issues which may be of future guide for similar situation as in the instant case and urge upon this court to deliver its decision and give its grounds;

(4) the learned Magistrate has the power to refuse to extend further remand.

[16] On the other hand, learned Deputy Public Prosecutor Dato' Abdul Rahman Putra bin Haji Taha replied that it is up to this court as to whether to deliver its decision as the matter has infact become academic but however, he conceded that there are several cases pending at the Magistrates Court where the consent has not been issued as yet and that the case could not be transmitted to the High Court until the consent is issued. He also conceded that the Magistrate has the discretion whether to grant further remand or not which arguably in the court's view would mean that the accused may have to be released and this may arguably go against the decision of this court if this court is minded to rule that the Magistrate has no power to grant a discharge not amounting to an acquittal where an accused is produced on a charge of murder an offence punishable under s. 302 of the Penal Code even if there is a delay on the part of the investigating agency to obtain the consent or the prosecution to produce the consent.

[17] On the other hand, if the Magistrate has no power to deal with the matter to overcome the delay other than to act as a rubber stamp and keep on extending the remand and supposedly having no control or discretion on the application by the prosecuting officer to extend the remand period, and the scenario is the same where a Magistrate who goes to the prison on a weekly basis so as to make an order to legalise the detention and all this action on the part of the Magistrate would seem to be nothing but a blanket order so as to allow the investigating agency to take their own time to complete the investigation when it is convenient to do so. The question still remains and which is troubling is that the physical appearance of the accused at the Magistrate's Court with respect would appear to be at the pleasure of the prosecution who will produce the consent ultimately months or years later and there appears to be no safeguard to the accused and this is grave injustice to the accused as it denies an accused person's right to a speedy trial and deny art. 5(1) of the Federal Constitution. (See *Public Prosecutor v. Choo Chuan Wang* [1992] 2 CLJ 1242).

[18] As to the consent for the second case which is pending at the Magistrate's Court, the learned Deputy Public Prosecutor is not sure whether the consent has been tendered at the Magistrate's Court and he will have to check it. In order to enable the Deputy Public Prosecutor to check on the consent for the second case which was pending at the Magistrate's Court

where this court will decide in the instant case whether to give its decision or to make no order, the case was adjourned to 24 August 2005.

[19] On 24 August 2005, learned Deputy Public Prosecutor Dato' Abdul Rahman Putra bin Haji Taha and En. Budiman Lufti bin Mohamed attended court. The three respondents and their counsels, Mr. L.H. Singh with Mr. Shivdev Singh for the third respondent and Dr. Naran Singh for the first and second respondents were present. The learned Deputy Public Prosecutor Dato' Abdul Rahman Putra Bin Haji Taha informed this court that there were some new developments in the second case which was pending at the Magistrate's Court and that it would be finalised by 19 September 2005 being the date of mention.

[20] On the questions posed by this court on the previous date, learned Deputy Public Prosecutor, Dato' Abdul Rahman Putra bin Haji Taha submitted as follows:

(1) He maintained that the learned Magistrate has no power to grant an Order of Discharge Not Amounting To An Acquittal (DNAA) and still relied on the case in *Public Prosecutor v. Lee Chan Sang;*

(2) he submitted that the case which is pending in this court has now become academic as the three respondents have now been recharged at the Ipoh Magistrate's Court No. 2;

(3) however, he conceded that the learned Magistrate has the discretion whether or not to grant further remand Order but quickly responded that the learned Magistrate has no power even to record a plea from the respondents on the charge but only to read and explain the charge;

(4) he is not aware that one of the Deputy Public Prosecutor from his office was directed by the learned Magistrate through the Prosecuting Officer to attend court on 18 July 2005 to explain the delay in obtaining the consent of the Public Prosecutor. He was also not aware that the learned Magistrate was not satisfied with the explanation of the Prosecuting Officer and that the delay was placed at the Deputy Public Prosecutor's office. Dato' Abdul Rahman Putra bin Haji Taha submitted that he had personally on many occasions attended Magistrate's Courts and there is no reason for his officers not to attend the Magistrate's Court if they

were directed and if it was communicated to the particular Deputy Public Prosecutor to attend the Magistrate's Court. He also submitted that no disrespect was intended to the Magistrate as the particular Deputy Public Prosecutor may not have been informed.

[21] On the other hand, learned counsel Mr. Shivdev Singh submitted that the prosecuting officer had infact informed the court on 18 July 2005 that the Deputy Public Prosecutor was unable to attend court on that day as he had a case to handle in another court which would mean that the learned Deputy Public Prosecutor was infact informed by the Prosecuting Officer. On further question by this court as to whether the prosecuting officer had infact informed the particular DPP to attend court as directed by the learned Magistrate, Mr. Shivdev Singh submitted that he still maintained what he has informed this court on 22 August 2005 where the prosecuting officer had informed the Magistrate in open court that the DPP was unable to attend court on 18 July 2005 as he had a case to handle in another court and this would mean that the DPP was informed of the Magistrate's directive for the Deputy Public Prosecutor to attend Court.

[22] The learned counsel Mr. L.H. Singh submitted that the Magistrate has the discretion to request for details of the progress of the case from the last date of the remand order till the date when the case is called up again before granting further extension of the remand. He also submitted that if the Magistrate is not satisfied with the grounds for further extension where the prosecution is unable to give any details of the progress made to expedite the production of the consent, the Magistrate has the discretion to refuse further extension of the remand order.

Decision Of This Court

[23] Ordinarily, this court would not deliver a decision if it would result in an academic exercise. In the instant case, the respondents have been reproduced on the same charge of murder punishable under s. 302 of the Penal Code before another Magistrate's Court immediately upon the respondents having been given a Discharge Not Amounting To An Acquittal (DNAA). Therefore, there is no justification or merits for any Order from this court for the case to be remitted back to the same Magistrate's Court where the respondents have been recharged on 18 July 2005. Be that as it may, since this matter was referred by the

learned Magistrate to this court to consider the correctness, propriety or otherwise of the Order of Discharge Not Amounting To An Acquittal (DNAA) where the learned Magistrate was faced with judicial dilemma, it is only appropriate in the interests of justice to answer the questions posed by the learned Magistrate and inform the parties of the decision of this court since the parties were heard and had assisted this court and submitted on the law in order for this court to arrive at a just decision. Furthermore, learned counsels have urged upon this court to give its decision as it involves issues of law which may be of future guidance in a given situation again where a Magistrate may be faced with such judicial dilemma. In so far as the instant revision is concerned, it may be an academic exercise as all the three respondents have been reproduced before another Magistrate's Court upon the Order of the Discharge Not Amounting To An Acquittal (DNAA) by the Magistrate's Court on 18 July 2005 and there was no living issue before this court. However, both learned counsels for the respondents have strenuously urged upon this court to deliver its decision for the reasons aforesaid although the learned Deputy Public Prosecutor has submitted that this court need not necessarily deliver its decision as the matter has become academic.

[24] This court wishes to refer to two cases on the issue that this matter has become academic before deciding whether this court should deliver its decision on the power of the Magistrate to grant Discharge Not Amounting To An Acquittal in cases which fall under s. 177A of the Criminal Procedure Code. In *Sun Life Assurance Company Of Canada v. Jervis* [1944] AC 111 at p. 113-114, where Viscount Simon LC said:

> My Lords, in my opinion, the House should decline to hear this appeal on the ground that there is no issue before us to be decided between the parties.
>
> I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing list between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties.

> The research which has been given to the matter does not discover any previous decision in which the House of Lords has undertaken, on the petition of an unsuccessful appellant, to review the decision below when the opposite party has been finally settled with, and I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue.

[25] In *Loknath Padhan v. Birendra Kumar Sahu* AIR [1974] SC 505 at p. 507-508, Bhagwati J (as he then was) said:

> The argument of the respondent was that unless there is a living issue between the parties the Court would not proceed to decide it: it would not occupy its time by deciding what is purely an academic question which has no sequitur so far as the position of the parties is concerned. Here, contended the respondent, even if the appellant was able to satisfy the Court that on the date of the nomination, the respondent was disqualified under Section 9-A, it would be a futile exercise, because the Orissa Legislative Assembly being dissolved the setting aside of the election of the respondent would have no meaning or consequence and hence the Court should refuse to embark on a discussion of the merits of the question arising in the appeal. We think there is great force in this preliminary contention urged on behalf of the respondent. It is a well settled practice recognised and followed in India as well as England that a Court should not undertake to decide an issue, unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties it would be a waste of public time and indeed not proper exercise of authority for the Court to engage itself in deciding it.
>
> It would be clearly futile and meaningless for the Court to decide an academic question, the answer to which would not affect the position of one party or the other. The Court would not engage in a fruitless exercise. It would refuse to decide a question, unless it has a bearing on some right or liability in controversy between the parties. If the decision of a question would be wholly ineffectual so far as the parties are concerned, it would be not only unnecessary and pointless but also inexpedient to decide it and the Court would properly decline to do so.

[26] However, as stated above and notwithstanding that the decision of this court in the instant case has became academic, it would still be desirable in the respectful view of this court to dispose of the issues raised in this criminal revision since arguments on law have been advanced by both parties and the issues

involved has created some degree of uncertainty and judicial dilemma amongst some Magistrates and lawyers. (See *Public Prosecutor v. Leong Ying Ming* [1993] 2 CLJ 143, *Ramanathan a/l Chelliah v. Pendakwa Raya* [1996] 2 CLJ 765, *R v. Secretary Of State For Home Department And Another; Ex-parte Abdi* [1996] 1 All ER 641). However, this court is mindful that it is not the practice to entertain or answer academic questions if it is embarrassing or would not serve any useful purpose, and therefore ought not to be entertained. Nevertheless, as stated above, the decision of this court may serve some useful purpose in future cases and since the matter was referred to this court by the learned Magistrate, it is only fair and proper that this court give its views on the matter which had created uncertainty among some Magistrates in the lower courts.

[27] In the instant case, two questions which are relevant are as follows:

(1) Whether a Magistrate has the power, inherent or otherwise to grant a Discharge Not Amounting To An Acquittal (DNAA) in favour of an accused person who is produced at the Magistrate's Court on a tentative charge of murder, an offence punishable under s. 302 of the Penal Code which under the law is triable only by a judge of the High Court and not by a Magistrate if the consent of the Public Prosecutor is not formally produced to the Magistrate for transmitting the case to the High Court forthwith as provided under s. 177A of the Criminal Procedure Code?

Section 177A of the Criminal Procedure Code reads as follows:

> Transmission of case to, and trial by, the High Court.
>
> (1) A prosecution in respect of an offence which is to be tried by the High Court in accordance with Chapter XX, shall not be instituted except by or with the consent of the Public Prosecutor:
>
> Provided that a person may be arrested, or a warrant for his arrest may be issued and executed, and any such person **may be remanded in custody** notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, **but the case shall not be further prosecuted until the consent has been obtained.** (emphasis added)

(2) In any prosecution pursuant to subsection (1), the accused shall be produced before the Magistrate's Court which shall, after the charge has been explained to him, transmit the case to the High Court and cause the accused to appear or be brought before that Court as soon as may be practicable:

Provided that when the accused is brought before the Magistrate's Court before the Public Prosecutor has consented to the prosecution, the charge shall be explained to him but he shall not be called upon to plead thereto.

(3) When the accused appears or is brought before the High Court in accordance with subsection (2), the High Court shall fix a date for his trial which shall be held in accordance with the procedure under Chapter XX.

(2) Whether a Magistrate's Court has the power to transmit the case to the High Court where an accused is produced at the Magistrate's Court on a tentative charge of murder an offence punishable under Section 302 of the Penal Code which is triable only by a Judge of the High Court without the consent of the Public Prosecutor being produced and tendered at the Magistrate's Court?

[28] This court is of the view that a Magistrate has no power to grant an Order of Discharge Not Amounting To An Acquittal (DNAA) where an accused is produced on a charge of murder, an offence punishable under s. 302 of the Penal Code. However, the Magistrate may grant Discharge Not Amounting To An Acquittal (DNAA) under two circumstances:

(1) At any previous stage of a summary trial where the Magistrate has jurisdiction to try the charge against the accused and where the charge is considered groundless and to record the reasons for the said Order pursuant to s. 173(g) of the Criminal Procedure Code.

Section 173(g) of the Criminal Procedure Code states:

Nothing in paragraph (f) shall be deemed to prevent the Court from discharging the accused at any previous stage of the case if for reasons to be recorded by the Court it considers the charge to be groundless. (See (1) [37]*Public Prosecutor v. Tan Kim San* [1980] 2 MLJ 98, (2) [5]*Chong Fook Fatt v. Public Prosecutor* [2004] 1 MLJ 67, (3) [28]*Public Prosecutor v. Hettiarachigae L.S. Perera* [1977] 1 MLJ 12).

(2) Where the Public Prosecutor declines to prosecute the accused further upon the charge at any stage of any trial, before the delivery of judgment and this is provided under s. 254 of the Criminal Procedure Code. Such discharge shall not amount to an acquittal unless the Magistrate so directs;

Section 254 of the Criminal Procedure Code states:

> Public Prosecutor may decline to prosecute further at any stage
>
> (1) At any stage of any trial, before the delivery of judgment, the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the accused upon the charge and thereupon all proceedings on such charge against the accused shall be stayed and the accused shall be discharged of and from the same.
>
> (2) At any stage of any trial before a Sessions Court or a Magistrates Court before the delivery of judgment, the officer conducting the prosecution may, if he thinks fit, inform the court that he does not propose further to prosecute the accused upon the charge, and thereupon all proceedings on such charge against the accused may be stayed by leave of the court and, if so stayed, the accused shall be discharged of and from the same.
>
> (3) Such discharge shall not amount to an acquittal unless the court so directs.

[29] This court is of the view that a Magistrate has no inherent power in a criminal case to grant a Discharge Not Amounting To An Acquittal (DNAA) apart from the two aforesaid grounds even where the consent of the Public Prosecutor to transmit the case to the High Court under s. 177A of the Criminal Procedure Code has been delayed or not tendered as yet. In the instant case, although the Order of the learned Magistrate to grant the Discharge Not Amounting To An Acquittal (DNAA) was to prevent injustice, delay and the process of the Court from being abused, the learned Magistrate still has no power to order a Discharge Not Amounting To An Acquittal (DNAA) as she has no jurisdiction to try the charge of murder under s. 302 of the Penal Code as it is triable exclusively by the High Court. (See *Public Prosecutor v. Lee Chan Sang* [1989] 1 CLJ 144; [1989] 1 CLJ (Rep) 139). At this stage, this court must make it clear that although the objection raised by the learned counsel in that case was on the issue of *autré fois acquit,* the Supreme Court has also

expressly dealt with the powers of a Magistrate in cases where the offence is triable exclusively by the High Court and where the Magistrate's Court is required to transmit the case to the High Court pursuant to s. 41A of the Dangerous Drugs Act 1952 which no doubt is equivalent to the provisions of s. 177A of the Criminal Procedure Code. (See *Chu Chee Peng v. Public Prosecutor* [1973] 2 MLJ 35). Therefore, the case of *Public Prosecutor v. Lee Chan Sang* is relevant to the questions posed in the instant case, and is binding on this court.

[30] This court with respect, disagrees with the contention of learned counsel Dr. Naran Singh that the Magistrate has the power to transmit the case to the High Court without the consent of the Public Prosecutor being produced at the Magistrate's Court as it is not the correct proposition in law. The legislature cannot speak with a forked tongue and statutory provision must be read as a whole and not in isolation or in piecemeal basis as if it is read in isolation, it can be misleading and probably misunderstood. Indeed, the only legitimate interpretation that can be applied to s. 177A of the Criminal Procedure Code when viewed in its entirety is that the Magistrate cannot order the case to be transmitted to the High Court without the consent of the Public Prosecutor having been produced. It is important to consider s. 177A of the Criminal Procedure Code in its entirety and not in isolation. (See *PP v. Duis Akim & Ors.* [2005] 2 CLJ 936, *Public Prosecutor v. Darkasyi & Anor* [2002] 8 CLJ 780 and *Pendakwa Raya v. Ilamaran a/l Kanniappan @ Anniappan* [1992] 1 CLJ 492; [1992] 3 CLJ (Rep) 224).

[31] Accordingly, a Magistrate has no power to transmit the case to the High Court where an accused was produced at the Magistrate's Court for an offence under s. 302 of the Penal Code which is triable exclusively by the High Court without the consent of the Public Prosecutor being produced. In *Public Prosecutor v. Oladotun Lukmaru Umaru & Ors* [1990] 2 CLJ 1026; [1990] 2 CLJ (Rep) 795, His Lordship, Edgar Joseph Jr. J (as he then was) said:

> ... In my view when a magistrate makes an order for transmission under s. 41A(1), that event although a judicial event, is a further step in the prosecution of the accused. It follows that that further step is barred until and unless the prior consent of the public prosecutor has been obtained.

A I am fortified in this, by the consideration that the requirement of a consent of the public prosecutor, is a well known safeguard for an accused person charged with certain of the graver offences as it ensures that he is not exposed to the risk of such a prosecution without the intervention of the public prosecutor who may, after applying his mind to the circumstances of the particular case, exercise his discretion by refusing a consent, in which event, the High Court will have no jurisdiction to try the accused for that offence. It follows that the order made by the learned magistrate, if allowed to stand, would have the effect of depriving the accused persons in this case of that safeguard.

[32] In *PP v. Duis Akim & Ors* [2005] 2 CLJ 936 at p. 947, His Lordship Sulong Matjeraie J said:

The authority of *PP v. Oladatun Lukmaru & Ors* [1991] 1 MLJ 187 as adduced by learned assigned counsel strengthened the prosecution case as it requires the consent of the Public Prosecutor before the Magistrate may transfer the case to the High Court. In the said case, the act of transmitting the case to the High Court prior to the consent of the Public Prosecutor is contrary to the legal provision.

[33] Powers of a Magistrate in criminal cases is expressly provided by the Subordinate Courts Act 1948 to be read with s. 9 of the Criminal Procedure Code. Section 85 of the Subordinate Courts Act 1948 states:

Criminal jurisdiction of First Class Magistrate.

Subject to limitations contained in this Act a First Class Magistrate shall have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed ten years' imprisonment or which are punishable with fine only and offences under sections 392 and 457 of the Penal Code.

[34] Section 86 of the Subordinate Courts Act 1948 states:

Criminal appeals from Penghulu's Courts.

In West Malaysia a First Class Magistrate shall have jurisdiction to hear and determine criminal appeals by persons convicted by a Penghulu's Court situate within the local limits of his jurisdiction and may, if he considers there is no sufficient ground for interfering, dismiss the appeal or may:

(a) in an appeal against a conviction:

(i) reverse the finding and sentence and acquit and discharge the appellant;

(ii) order the appellant to be retried by any lower court of competent jurisdiction; or

(iii) alter the finding and make such order as to the sentence as may thereupon to the Court seem fit;

(b) in an appeal against sentence, reduce or vary, but not enhance, the sentence; and

(c) in an appeal against the other order, alter or reverse the order.

[35] Section 9 of the Criminal Procedure Code states:

Criminal jurisdiction of Magistrates

Subject to the provisions of this Code every Magistrate shall have cognisance of and power and authority to:

(a) hear, try, determine and dispose of in a summary way prosecutions for offences committed wholly or in part within the local jurisdiction of such Magistrate and cognisable by such Magistrate;

(d) inquire into complaints of offences and summon and examine witnesses touching such offences and summon and apprehend and issue warrants for the apprehension of criminals and offenders, and deal with them according to law;

(e) issue warrants to search or to cause to be searched places wherein any stolen goods or any goods, articles or things with which or in respect of which any offence has been committed are alleged to be kept or concealed, and require persons to furnish security for the peace or for their good behaviour according to law;

(f) hold inquiries of death; and

(g) do all other matters and things which a Magistrate is empowered to do by any written law.

[36] However, the Magistrate's Court may perhaps refuse to grant further remand or extend the remand for good reasons to be recorded and if it is found that the process of the court is being abused by multiple adjournments and there is indefinite and excessive delay over a long and unreasonable period pending the consent of the Public Prosecutor being produced. An application to extend further the remand period until the consent of the Public Prosecutor has been obtained should not give the

impression that it should follow automatically as the power whether to grant an order or not to extend the remand period is entirely at the discretion of the learned Magistrate. The court has to act judicially and has to consider both the public interest and any unfairness to an accused person as consideration by the court of only one aspect without considering the other aspect may not be a proper judicial exercise. Nevertheless, each case should be considered and decided on its own particular set of facts and circumstances of the case.

[37] It is important to observe that the remand of an accused person should not be ordered by the Magistrate generally as a matter of course or by a mechanical exercise. If the prosecuting officer does not advance any satisfactory explanation or reasonable cause that a further remand was necessary for the purpose of obtaining the consent of the Public Prosecutor with a view to transmit the case to the High Court, the Magistrate has the discretion by just not granting further remand or extension as an accused or any individual cannot be left with a charge or criminal proceedings hanging over him for an indefinite period unless for any reasonable cause. The court has to exercise its discretionary powers judiciously and not act as a rubber stamp and lean always towards granting or extending the remand period without having sufficient materials before the court. (See *Koh Teck Chai v. Public Prosecutor* [1968] 1 MLJ 166, *Tan Foo Su v. Public Prosecutor* [1967] 2 MLJ 19, *K. Abdul Rasheed v. Public Prosecutor, Ah Chak Arnold v. Public Prosecutor* [1985] 1 MLJ 193). What is important in criminal matters is that there should be no excessive delays and a person charged in court should not remain too long especially in remand and be in a state of uncertainty about his fate and there is a need for special diligence in the prosecution of accused persons detained in custody. (See *Stogmuller v. Austria* [1969] 1 EHRR 155, *Attorney General's Reference No: 1 Of 1990* [1992] 3 All ER 169, *Srinivas Pal v. Union Territory Of Arunachal Pradesh (Now State)* AIR [1998] SC 1072, *Public Prosecutor v. Choo Chuan Wang* [1992] 2 CLJ 1242; [1992] 3 CLJ (Rep) 329, *Bell v. DPP* [1985] 3 All ER 73, *Director Of Public Prosecutions v. Humphrys* [1976] 2 All ER 497, *Karpal Singh & Anor v. Public Prosecutor* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183, *Public Prosecutor v. Dato Kee Yong Wee & Ors* [1987] 2 CLJ 329; [1987] CLJ (Rep) 865, *Chong Siew Choong v. Public Prosecutor* [1996] 2 CLJ 823).

[38] Be that as it may, the time frame for the investigating agency to obtain all the relevant documents namely, the postmortem report, the chemist report, the DNA report and other related documentary evidence from the relevant government agencies or department is essential for the accused to be tried within a reasonable time and without any excessive delay or abuse of the process of the court by the continuation of the remand which is likely to be prejudicial to an accused person. An accused person cannot remain in remand too long in a state of uncertainty about his fate. (See *Stogmuller v. Austria* [1969] 1 EHRR 155). In such circumstances, this court is of the view that the Magistrate has the power to direct the investigating agency through the prosecuting officer to obtain the said documents and fix a time frame to comply with the direction of the court. If, however, the investigating agency is not able or prepared to comply with the direction of the court, then perhaps, it would tantamount to non-compliance with the order of court and the consequence should follow and the authorities concerned must be prepared to face the consequence. On the other hand, if the investigating agency has obtained all the relevant documents and the investigation has been completed but is awaiting the consent to be issued by the Public Prosecutor, then the Magistrate perhaps can direct the Public Prosecutor or the Deputy Public Prosecutor through the prosecuting officer to produce the consent as required under s. 177A of the Criminal Procedure Code within a reasonable time and fix the time frame if the Public Prosecutor wishes to proceed with the prosecution of the accused on the charge which is exclusively triable by a judge of the High Court. All these orders or directions are safeguards for an accused person so that his right to a speedy trial will be adhered to and the Magistrate will not be seen to be granting orders in a mechanical fashion and without any judicial power.

[39] In *Hussainara Khatoon And Ors v. Home Secretary, State Of Bihar* [1980] 1 SCC 81, where Bhagwati J (as he then was) said at p. 84:

> It is a crying shame on the judicial system which permits incarceration of men and woman for such long periods of time without trial. We are shouting from housetops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But, we are not denying human rights to these nameless persons who are languishing in jails for years for

offences which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedoms from these neglected and helpless human beings who have been condemned to a life imprisonment and degradation for years on end? Are expeditious trial and freedom from detention not part of human rights and basic freedoms? Many of these unfortunate men and woman must not even be remembering when they entered the jail and for what offence. They have over the years ceased to be human being; they are mere ticket-numbers. It is high time that the public conscience is awakened and the government as well as the judiciary being to realise that in the dark cells of our prison, there are large numbers of men and woman who are waiting patiently, impatiently perhaps, but in vain, for justice - a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice they are helpless and despairing victims of the callousness of the legal and judicial system.

His lordship went on to hold that:

> If a person is deprived of 'his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would violate of his fundamental right under Art 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Art 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Art 21.

[40] In *Srinivas Pal v. Union Territory Of Arunachal Pradesh (Now State) AIR* [1998] SC 1072, the Supreme Court quashed the proceedings against the appellant on the ground of delay in investigation and commencement of trial in respect of an offence under s. 304A read with s. 338 of the Indian Penal Code. (See also *Diwan Naubat Rai v. State Through Delhi Administration* AIR [1989] SC 542, *State Of Maharashtra v. Champalal Punjaji Shah* AIR [1981] SC 1675).

[41] However, an accused person may also have a remedy to apply to the High Court for Writ of Habeas Corpus where the delay in completing the investigation or obtaining an issuance of the consent has been caused without any reasonable explanation

or shows *mala fide* on the part of the investigating agency or prosecution or there is an abuse of the process of the court despite numerous application to extend the remand and bearing in mind that the offence is not bailable. (See *Teng Howe Sing v. Ketua Polis Daerah & Anor* [1999] 8 CLJ 626, *Director Of Public Prosecutions v. Humphrys* [1976] 2 All ER 497, *R. v. Jewitt* [1985] 2 SCR 128, *Reg v. John Robins* [1884] 1 Cox 114, *Attorney General's Reference No: 1 Of 1990* [1992] 3 All ER 169, *R v. Oxford City Justices, Ex-parte Smith* [1982] 75 Cr. App. R. 200, *Do'r v. The Director Of Public Prosecutions* [1997] 2 IR 273, *Srinivas Pal v. Union Territory Of Arunachal Pradesh (Now State)* AIR [1998] SC 1072, *Veerbhara v. Ramasamy Naikar* AIR [1958] SC 1032, *Bell v. DPP* [1985] 3 All ER 73, *Ling Ah Hun & Anor v. Public Prosecutor* [1960] MLJ xlv).

[42] In *Public Prosecutor v. Zainuddin & Anor.* [1986] 2 MLJ 100 at p. 102, His Lordship Salleh Abas LP (delivering the judgment of the Supreme Court said):

> Of course, postponements whether they be refused or granted are always at the discretion of the court. Should it refuse a postponement, the deadlock which Mohamed Azmi J had spoken about is not without solution. It could be solved by continuous mutual respect and co-operation between the court, the prosecution and the defence. In ordering a discharge the court should not be unduly concerned about the possibility of subsequent re-arrest and re-charging. There is every possibility (one always hopes for the best) that the prosecution may wish to discontinue the proceeding as frequent re-arresting and re-charging would reflect badly on the conduct of the prosecution. In that event it may withdraw the charge or simply offer no evidence, or even enter a *nolle prosequi.* If, however, the prosecution is not prepared to discontinue the proceeding, as it might have a reason of public interest to continue and maintain it, there are only two options open to the Court – grant the postponement sought for or discharge the accused. If the court considers that a mere discharge does not meet with the justice of the case because the offence by reason of numerous postponements has become trivial and lost its potency and that the case should be disposed of quickly the court should make an order leaving the prosecution with no choice except to discontinue. Perhaps, a short adjournment or a last adjournment should be granted so as to enable the prosecution to make up its mind one way or the other. It might well be that in the end the prosecution may decide to

discontinue. Thus, the co-operation and mutual respect between the bench and the bar in the administration of justice is so important that it should not be undermined.

A word of caution should be expressed here. Magistrates must appreciate that the refusal to postpone trials must inevitably result in the discharge of the accused and this power should therefore be used sparingly as a last resort only. It should not be ordered as an expression of anger and exasperation at or as a censure against the conduct of the prosecution. Failure to exercise this power judicially will lead to injustice and inconvenience to the accused – the very purpose for which power is exercisable. It is therefore necessary to consider the possibility of re-charge and weigh it with the convenience or otherwise which would be caused to the accused. There is no advantage to him if his discharge will result in his subsequent re-arrest, because by then his solicitor or counsel would have been discharged following his discharge by the court and therefore his solicitor or counsel has to be re-engaged, thus entailing additional expenses. The court's record no doubt would appear to be neat and tidy by the order of discharge but it does not solve the problem of the accused's liability and possibility of disadvantage and inconvenience that would be caused to him.

Anyone performing a judicial function naturally abhors at the idea of the prosecution re-charging a person who has just been discharged and released by the court. The possibility of conflict between the court and the prosecution as reflected in repetitive discharges and subsequent re-charges should not be solved by ascribing to the court the power which it has not or by giving it an upper hand so that it could stop and prevail over the prosecution in such conflict by ordering a discharge amounting to acquittal. (see [20]*Pendakwa Raya lwn. Pang Wai Kong Dan Lain-Lain* [1992] 2 MLJ 204, [1980] 2 MLJ 201)

[43] On the other hand, by this refusal to grant further remand, it cannot be denied there would be repetitive recharging of the accused and this may result in a deadlock situation between the bench and the prosecution which should be avoided as judicial - prosecution confrontation would interrupt and strain the smooth flow in the administration of justice. (See *Public Prosecutor v. David Noordin* [1980] 2 MLJ 146).

[44] This court also wishes to take this opportunity and add as a caution that the requirement to meet the number of cases disposed should not under any circumstances influence the courts' discretion as to adjournments as each case should be decided on its own merits and circumstances and not arbitrarily. In the instant

case, the accused was first produced at the Magistrate's Court on 14 April 2004 and the consent was not forthcoming until about one (1) year three (3) months and three (3) days later on 18 July 2005. The granting of an adjournment in a criminal case which may not be relevant to the instant case but has some bearing is governed by the provisions of s. 259 of the Criminal Procedure Code which states:

> Power to postpone or adjourn proceedings.
>
> (1) If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial the Court may, by order in writing, from time to time, postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may, by warrant, remand the accused if in custody:
>
> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding eight days at a time:
>
> Provided further that where a Government Medical Officer has certified that the complainant will not be able to give evidence before a certain date the accused may be remanded until such date notwithstanding that the term of remand may exceed eight days.
>
> (2) Every order made under this section by the Court of a Magistrate shall be in writing, signed by the presiding Magistrate, and shall state the reasons for it.

[45] Ordinarily, courts should refrain from granting adjournment of cases already fixed for hearing where it results in delayed justice except in circumstances where adjournments is necessitated for the purpose of justice and the court has the discretion to impose terms of the adjournment to be granted. (See *Public Prosecutor v. Tanggaah* [1972] 1 MLJ 207 at p. 208, *Public Prosecutor v. Karumah* [1980] 2 MLJ 102, *Public Prosecutor v. Khoo Kay Jin* [1973] 1 MLJ 259, *Public Prosecutor v. Au Seh Chun* [1998] 3 CLJ Supp 56). Criminal cases should be disposed expeditiously and without excessive delay and the accused is entitled to demand for an early trial or his case be heard expeditiously but nevertheless justice should not be hurried in such a fashion that the principles of justice is denied or sacrificed. The court must act judiciously

and carry out a balancing exercise between public interest and any unfairness to an accused person. (See *Public Prosecutor v. H. Chamras Tasaso* [1975] 2 MLJ 44).

[46] Public interest demands that the court should exercise its powers judiciously and not according to the wishes of one party where that wish if granted by the court is blatantly wrong in law and illegal. It requires no reminder that both the defence counsel and prosecuting officers are officers of the court and they are expected to assist the court to arrive at a just decision and in accordance to law and not to mislead the court or abuse the process of the court for their own agenda.

Failure Of Deputy Public Prosecutor To Comply With The Direction Of Magistrate To Attend Court

[47] As to the complaint that the Deputy Public Prosecutor had failed to comply with the direction of the learned Magistrate for the Deputy Public Prosecutor to attend court, it is important to observe that Magistrates and Deputy Public Prosecutors are both members of the same and fused judicial and legal service although they are posted to and may serve in various different capacities in either the judiciary or legal department but both perform different functions and are independent of each others' duties. Nevertheless and at the same time, there must certainly be mutual respect in the attainment and maintaining the administration of justice. (See *Public Prosecutor v. Saubin Beatrice* [1983] 1 CLJ 31; [1983] CLJ (Rep) 808 and *Cheak Yoke Thong v. Public Prosecutor* [1984] 2 CLJ 83; [1984] 1 CLJ (Rep) 87). Therefore, in some cases where the Deputy Public Prosecutor is senior to the Magistrate is insignificant in so far as he or she is required to comply with the direction of the Magistrate or the court. In the instant case, the Magistrate had directed the prosecuting officer to request for the Deputy Public Prosecutor to attend court on 18 July 2005 to explain the delay and to inquire whether the consent was issued and if so, when, so as to transmit the case to the High Court if the Public Prosecutor intends to proceed further with the prosecution as the explanation given by the prosecuting officer has not been consistent, unsatisfactory, unacceptable and had diverted the cause of the delay to the Deputy Public Prosecutor's office as no specific reasons or instruction had been given to the prosecuting officer by the learned Deputy Public Prosecutor in reference to the case which was pending over an indefinite period at the Magistrate's Court, Ipoh.

[48] In those circumstances, it is not only desirable but justice demand that the Deputy Public Prosecutor is obliged to comply with the direction of the Court. Infact, learned counsel Mr. Shivdev Singh has stated from the Bar that the prosecuting officer had infact informed the learned Magistrate that the Deputy Public Prosecutor will not be able to attend Court as he is engaged in another court which obviously would mean that the particular Deputy Public Prosecutor has been informed of the directive of the learned Magistrate. It is important to stress at this stage by way of observation that if a Deputy Public Prosecutor decides to disregard the directive or Order of the court be it a Magistrate's Court or Sessions Court irrespective of the Deputy Public Prosecutor's status or its seniority, he or she must be prepared to accept the consequences as a result of the non-compliance of the Order or directive of the learned Magistrate. Every order or judgment of the court must be complied or else there will be chaos (per Hashim Yeop A. Sani J (as he then was) in *Public Prosecutor v. H. Chamras Tasaso* [1975] 2 MLJ 44) and the institution must be protected and continued to have its safeguards. If a Deputy Public Prosecutor an officer of the court shows disrespect to the directive or order of the court, then the breach or non-compliance of the order must be dealt with in the manner as provided by the law. It is hoped that this drastic action as provided by the law will not be necessary and that the Deputy Public Prosecutor and all parties concerned would comply with any order or directive of the court until such time the order is set aside or withdrawn or else there will be chaos in the administration of justice. It is essential that there should be no strain in the relationship between officers of the legal and the judicial department as both are in a fused service and as officers of the court, both should clearly understand their respective functions. (see *Public Prosecutor v. Mat Radi* [1982] 1 MLJ 221 at p. 222). The duty of the court has been so admirably expressed by Fletcher Moulton LJ in *D v. D* [1903] P. 144 "... that courts of justice, who are the guardians of public liberties ought to be doubly vigilant against encroachments by themselves." However, it is important to state at this stage that the failure on the part of the Deputy Public Prosecutor to attend court as directed by the learned Magistrate should not generally be used as a ground to grant a Discharge Not Amounting To An Acquittal. (See *Public Prosecutor v. Hon Jiew Foh @ Ah Ho* [1994] 3 CLJ 488).

[49] Be that as it may, it is also appropriate to state at this stage that failure of the Deputy Public Prosecutor to appear in court after he had been informed by the prosecuting officer that the learned Magistrate required him to attend court on 18 July 2005 and explain the position of the investigation and the consent might be described as a disobedience to an order of the court or amounted to a discourtesy to the learned Magistrate and may not necessarily cross the line from discourtesy into the area of contempt and each case is on its own set of facts. (See *Weston v. Central Criminal Court Courts Administrator* [1977] 1 QB 32, *Izuora v. The Queen* [1953] AC 327, *Balogh v. ST. Albans Crown Court* [1975] QB 73).

Handcuff

[50] The complaint raised by learned counsel, Mr. Shivdev Singh that the respondents were not released from the dock upon the order of Discharge Not Amounting To An Acquittal, it is important to state that even in cases of criminal trial or where the proceedings in court is in progress, an accused person should not be handcuffed unless the accused is violent or shown to be violent for which there must be some credible and admissible material before the court in support of the violence or has committed a crime of violence or that he may attempt to escape. In the instant case, the respondents were ordered to be discharged by the court and consequently they are entitled to their freedom as guaranteed by the Federal Constitution and no further restrain is required or be placed on them. (See *Public Prosecutor v. Wee Swee Siang* [1948] 14 MLJ 114, *Yaakub bin Ahmad v. Public Prosecutor* [1975] 2 MLJ 223 at p. 224 and *Ramanathan a/l Chelliah v. Pendakwa Raya* [1996] 2 CLJ 765).

[51] It is the view of this court that once an accused is ordered to be discharged by the court whether rightfully or wrongfully, the accused is freed by the court and he is entitle to his liberty immediately where the restraint has been lifted. Accordingly, anyone who is in breach or refuse to enforce the order of the court must be prepared to face the consequences and in this matter, prosecuting officers who are also officers of the court are obliged to ensure that the order of the court is practically carried out without putting any strain upon the accused or embarrassment to the court as once the accused is ordered to be discharged by the court, he is entitled to be freed immediately without any

further restraint or conditions unless directed otherwise by the court which was not so in the instant case. Accordingly, the prosecuting officer ought to have carried out the order of discharge by ensuring that the accused is taken out of the dock and freed and his liberty restored immediately so as not to embarrass the court or put the accused to any strain.

[52] In the circumstances and on the facts in the instant case, this court is of the view that the Order to Discharge Not Amounting To An Acquittal (DNAA) given by the learned Magistrate was made without jurisdiction. As the matter has presently become academic, there is no order made on the revision proceedings.